

MANDATE

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of November, two thousand sixteen.

Present:

John M. Walker, Jr.,
Robert D. Sack,
Denny Chin,
Circuit Judges.

National Labor Relations Board,

Petitioner,

v.

16-3380

East Market Restaurant, Inc.,

Respondent.

This matter is before the Court on the application for enforcement and proposed judgment submitted by petitioner National Labor Relations Board. Upon due consideration, it is hereby ORDERED that the application for enforcement is GRANTED and the proposed judgment filed on October 4, 2016, is adopted by the Court and attached to this order.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk




A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit




MANDATE ISSUED ON 11/30/2016

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
v.	:	Board Case Nos.:
	:	02-CA-120982
EAST MARKET RESTAURANT, INC.	:	02-CA-133656
	:	02-CA-144988
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, East Market Restaurant, Inc., its officers, agents, successors, and assigns, enforcing its order dated June 30, 2015, in Case Nos. 02-CA-120982, 02-CA-133656 and 02-CA-144988, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, East Market Restaurant, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith

FOR THE COURT:

NATIONAL LABOR RELATIONS BOARD

v.

EAST MARKET RESTAURANT, INC.

ORDER

East Market Restaurant, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Threatening employees with criminal charges, unspecified reprisals, or discharge because they engage in concerted activities.
- (b) Threatening to close the restaurant to discourage employees from engaging in protected concerted and union activities.
- (c) Discharging employees because they join the Union and engage in concerted activities or to discourage employees from engaging in these activities.
- (d) Failing and refusing to bargain collectively and in good faith with 318 Restaurant Workers Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit with respect to the effects of its decision to cease operations at its New York, New York facility:

All full-time and regular part-time dining room employees, including bus persons, waiters, captain, hosts and dim sum sellers employed by Respondent at its facility. And excluding guards, professionals, kitchen employees and supervisors as defined in the National Labor Relations Act, as amended.

- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) In the event that the Respondent resumes operations, offer Sky Wong and Sai Qin Chen full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without

prejudice to their seniority or any other rights or privileges previously enjoyed.

- (b) Make Sky Wong and Sai Qin Chen whole for any loss of earnings and other benefits they may have suffered as a result of its unlawful conduct, with interest, in the manner set forth in the remedy section of this decision.
- (c) Compensate Sky Wong and Sai Qin Chen for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters.
- (d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges of Sky Wong and Sai Qin Chen and, within 3 days thereafter, notify them in writing that this has been done and that its unlawful conduct will not be used against them in any way.
- (e) On request, bargain collectively and in good faith with the Union concerning the effects of the Respondent's decision to cease operations at its New York, New York facility, and reduce to writing and sign any agreement reached as a result of such bargaining.
- (f) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.
- (g) Compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.
- (h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (i) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix," in English as well as Mandarin, Cantonese, Foo Zhu, and any other dialects spoken by the employees, to the Union and to the last known addresses

of all unit employees who were employed by the Respondent at any time since November 26, 2013. In addition to physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

- (j) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

MAILED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with criminal charges, unspecified reprisals, or discharge because they engage in concerted activities.

WE WILL NOT threaten to close the restaurant to discourage employees from engaging in protected concerted and union activities.

WE WILL NOT discharge employees because they join the Union and engage in concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with 318 Restaurant Workers Union as the exclusive collective-bargaining representative of our unit employees with respect to the effects of our decision to cease operations at our New York, New York facility. The bargaining unit is:

All full-time and regular part-time dining room employees, including bus persons, waiters, captain, hosts and dim sum sellers employed by Respondent at its facility. And excluding guards, professionals, kitchen employees and supervisors as defined in the National Labor Relations Act, as amended.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, in the event that we resume operations, offer Sky Wong and Sai Qin Chen full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Sky Wong and Sai Qin Chen whole for any loss of earnings and other benefits they may have suffered as a result of our unlawful conduct, with interest.

WE WILL compensate Sky Wong and Sai Qin Chen for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharges of Sky Wong and Sai Qin Chen, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that our unlawful conduct will not be used against them in any way.

WE WILL, on request, bargain collectively and in good faith with the Union concerning the effects of our decision to cease operations at our New York, New York facility, and WE WILL reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay our unit employees their normal wages for the period set forth in the Board's decision, with interest.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

EAST MARKET RESTAURANT, INC.

The Board's decision can be found at www.nlrb.gov/case/02-CA-120982 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

